

**Stafford County
BOARD OF ZONING APPEALS**

MINUTES June 26, 2007

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, June 26, 2007 was called to order with the determination of a quorum at 7:00 p.m. by Chairman Cecelia Kirkman in the Board Chambers of the Stafford County Government Center. Ms. Kirkman introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. She asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Ms. Kirkman said the By-Laws of this Board state that the applicant is allowed up to ten minutes to state their case, the other speakers are allowed up to three minutes to testify, and the applicant is allowed up to three minutes for rebuttal.

Members Present: Cecelia Kirkman, Julie Rutledge, Ernest Ackermann, Steven Beauch, Larry Ingalls, Angelo Amador, and John Overbey

Members Absent: None

Staff Present: Rachel Hudson, Acting Zoning Administrator
Melody Musselman, Senior Zoning Technician
Wanda Doherty, Recording Secretary

Declarations of Disqualification's:

Mr. Ingalls and Ms. Rutledge both stated their company's have worked with Leming and Healy who is representing case SE06-13/2600643 Mt. Ararat Baptist Church but have not worked on the case and feel they can render an unbiased decision.

Ms. Kirkman stated she would like to explain some of the differences between the Board of Zoning Appeals (BZA) and processes of other Boards. She said the BZA is a quasi judicial body and what that means is in hearing testimony we need to hear from the applicant and those speaking for and against the application about the points the Board is to consider. She said for a Special Exception those points are things like the use of the property for the Special Exception would not change the character and establish pattern of development. She said those are the points we need to hear from folks in their testimony tonight.

PUBLIC HEARINGS:

Ms. Musselman reviewed the following case for the Board.

V06-05/2600339 - SUNSHINE HOME BUILDERS - Requests a Variance from Stafford County Code, Section 28, Section 35, Table 3.1, "District Uses & Standards", A-1, Agricultural, front yard requirement for a single-family dwelling on Assessor's Parcel 56E-13. The property is zoned A-1, Agricultural, and is located at 315 Sandy Ridge Road.

Mr. Ingalls said in his opinion they would also have to grant a Variance for the porch.

Ms. Musselman said porches can encroach six feet.

Mr. Ingalls said the porch is 42' .8" and with the 6' feet it would be 48' .8".

Ms. Musselman said that is correct.

Mr. Ingalls said we would have to grant a Variance for the porch.

Ms. Musselman said that is correct.

Ms. Kirkman said we did not advertise for a Variance, we advertised for a Special Exception.

Ms. Musselman said it is a Variance request and was advertised as such.

Ms. Kirkman asked if the porch was included in the advertisement.

Ms. Musselman said we did not advertise for the porch.

Ms. Kirkman asked if it would have to be advertised.

Ms. Musselman said the advertisement is correct but the information in the staff report only includes the dwelling and not the porch.

Mr. Keith Newport, Sunshine Home Builders the applicant said the lot the house is built on has a steep slope, RPA in the back and trying to get the grade to all work he could not tell you what happened with the placement of the house. He said he personally pulled the stakes, the measurements for the corners of the footings and tape on the wall check and did not know if they were moved. He said when he pulled the tape for the front it appeared to be right to him right before they were pouring the foundation. He said his mistake was he pulled off the road and the road is seven feet off center, seven feet in the wrong direction. He said it gave the illusion at the time that they were right where the house should have been. He said when they get to the end

process of the house and almost at settlement they noticed the encroachment and they tried to figure out how to correct it. He said that is why he is here and it is probably his mistake and since he learned roads can be in the wrong spot he has taken measures and has a surveyor checking all his foundations. He said this should never happen again and he has been doing this for thirty years and this is the first time he has ever encroached on a restriction line.

Ms. Rutledge said Mr. Newport in your Variance justification it states on the very first line that you are asking for a Variance of 5' 3" and in our packet it states 5' 4", is that a typo.

Mr. Newport said it was a typo.

Ms. Rutledge said when you say the road is in the wrong place, are you saying that you measured to the center line of the road or the edge of the road.

Mr. Newport said when he was in the field pulling the tape he measured from the center line of the road fifty feet in direct line with the corner that was closest to the property line. He said he pulled from that point 25' to the house and it appeared he had plenty of room.

Ms. Rutledge said you did not take into consideration the curve of the road.

Mr. Newport said the road is not supposed to have a curve in it and that is why I went to that point. He said as the road curves it is when it becomes 7' out of center. He said he has put in roads himself and all the property lines have that center line and that radius and it was an assumption I made at the time that was incorrect. He said he has caused a whole series of events that are regrettable and I apologize.

Ms. Rutledge said that is why there is a BZA.

Ms. Ingalls said when he looks at the grading plan submitted with the Building Permit it showed the driveway on the left hand side as you face the house from the road. He said the final survey shows it on the other side. He said can you tell me why that was switched and did it cause any problems.

Mr. Newport said it did not cause any problems but could not say why it was on the plans that way because that particular model either has a garage drive through or not. He said he believes the surveyor put a generic driveway not realizing I was going to put the driveway under the house.

Mr. Ingalls said during the course of business do you normally have wall checks done on your foundations prior to going further.

Mr. Newport said he does not but at the time not to appear arrogant but he has always felt confident on large lots that he could navigate around and not have this problem.

Ms. Rutledge said she notices that the RPA takes up the majority of the lot and it has a very steep slope. She said is this the only place you could find to put the house?

Mr. Newport said yes, there is a very minimal area on the lot to put the house and we had to hit it just right and we didn't.

Mr. Ackermann said the original plans showed it far enough back from the road.

Mr. Newport said yes.

Ms. Kirkman said this says the original plan has it setting back 58' and you missed the mark about 14' from the original setback.

Mr. Newport said yes.

Ms. Kirkman said one of the criteria we have to use is determining qualifications for a Variance is that it is not self imposed. She said in other words it is not created by the applicant and how would you respond to that.

Mr. Newport said that is why he is at a loss as far as understanding how the stakes got where they were because he pulled those corners directly off the surveyor's stakes. He said he is not sure he can answer the question.

Ms. Rutledge said Mr. Newport you did not do this on purpose.

Mr. Newport said he did not intend to do this.

Ms. Rutledge said did you check the distance on the grading plan from where you had staked the property. She said that difference is significant from what the final stake out is.

Mr. Newport said he checked it when he pulled the tape and the difficulty is the slope as steep as it is trying to hold the tape level as you are going down the hill. He said it appeared to him when he was pulling it that it was right where it was supposed to be. He said his mistake was not having the surveyor come back and double check it. He said from now on he has a surveyor check everything he puts in.

Ms. Kirkman asked if there is any other way the situation can be remedied other than granting a Variance.

Mr. Newport said the biggest problem now is it would wipe out the entire master bedroom and leave them with something very tiny.

Ms. Kirkman asked if there was anything with the topography of the land that would prevent adding those six feet to the back of the house.

Mr. Newport said with the design of the house you would practically have to rebuild the entire house because the bathroom sits between the back and the master bedroom. He said if you added five feet to the back you would be adding it to the master bathroom not the bedroom. He said to re-plum and move back you would have to tear down most of the house.

Proponents: None

Opponents: None

Ms. Kirkman gave the applicant a final opportunity to speak.

Mr. Newport said he apologized and feels foolish for making the mistake and guarantees it will not happen again.

Ms. Kirkman closed the public hearing.

Motion:

Mr. Overbey made the motion to deny the request for Variance for case V06-05/2600339.

Mr. Ackerman seconded.

Mr. Overbey said he made the motion because with the ruling of the State Supreme Court concerning Variances it goes with the land and not necessarily the structure on the land. He said this property can still be used as it was intended unfortunately it may be a very expensive lesson for the builder. He said under the circumstances the Supreme Court was very, very, clear on where we are with these types of request.

Ms Kirkman asks if there was other discussion.

Mr. Ingalls said he did not know how he would vote on the motion. He said this is a difficult lot to build on and in a lot of ways if any of us drove down the road we would not know this house was in violation. He said some consideration should be given but not sure what.

Ms. Rutledge said she is not going to vote for the motion because she feels this is why we have a BZA to consider situations that are difficult like this. She said she agrees with Mr. Ingalls that

the lot is a very difficult lot to build on and apparently roads move and difficult to get with the topo of the lot and the location of the road and curvature. She said errors can happen and I think that is why we are here, so I would not vote in favor of the motion.

Mr. Ackermann said he seconded the motion because it is unfortunate, it is self inflected problem, and the original plan had the house far enough back from the road according to the property and the original plan to build this house there. He said it was unfortunate that it was not built there. He said part of our charge is to grant Variances where there is property that really can't be built on and that is why I seconded the motion and will vote for it.

Mr. Beauch said he would like to explain that this is a case example that we have all been to school on. He said this is one of the examples and it is very heart wrenching to do this but when a mistake is self imposed made by the builder we are almost prohibited by state law from approving this motion. He said there are reasons we can use to approve it. He said my two colleagues beside me made powerful arguments; it would be very difficult to get it right and unreasonable to expect them to tear down the house and move it. He said it is a big problem and not an easy decision for any of us.

Vote:

Motion to deny 4-3

Ms. Rutledge – nay

Ms. Kirkman – yes

Mr. Ackermann – yes

Mr. Beauch – nay

Mr. Overbey – yes

Mr. Amador – yes

Mr. Ingalls - nay

Ms. Musselman reviewed the following case for the Board.

SE06-13/2600643 - MOUNT ARARAT BAPTIST CHURCH - Requests a Special Exception per Stafford County Code, 28-38(j), "Performance Regulations, Exceptions to Open Space Ratio", to allow a reduction of the open space requirement on Assessor's Parcels 19-62C, 63, 63A, 64A, 67B, 67E, 67L, and 67N. The property is zoned A-1, Agricultural and A-2, Rural Residential, located at 65 Toluca Road.

Mr. Ackerman asked if the boundary line adjustment change was for the open space ratio or consolidation of plats. He said he was asking what the purpose of that was.

Ms. Musselman said it did not change the open space ratio.

Ms. Kirkman said when they received the notice about the consolidation of the plats she thought they would get an application for one parcel rather than three parcel numbers and we did not get that.

Ms. Musselman said staff does not have the consolidated parcels from the Commissioner of Revenue office yet and they can not consolidate parcels when they are across the street.

Ms. Kirkman asked why that is.

Ms. Musselman said it would create a defacto subdivision.

Ms. Kirkman said then they would have to apply for a subdivision, is that what the issue is.

Ms. Kirkman said Ms. Hudson would you like to help us out and my next question is each of those three parcels has a different open space ratio on it. She said is the advertisement correct because we only advertised one reduction in the open space ratio.

Ms. Musselman said the only time we advertise more than one is when we have different code sections. She said this code section pertains to open space and it says to allow a reduction of the open space and listed all the parcels involved before the consolidation.

Ms. Kirkman said she sees on the GDP that the maximum height for this project for the building height is 199' feet. She said is that roughly an 18 to 20 story building and do we have anything in Stafford that high.

Ms. Musselman said not that she was aware of.

Mr. Clark Leming of Leming and Healy representing Mount Ararat Baptist Church said also present is Senior Pastor Mr. Todd Gaston, the Administrative Pastor Mr. Greg Poss and a number of the membership. He said as indicated this is a request for a Special Exception and are different from Variances and have different criteria. Mount Ararat Baptist Church has been serving the community for almost a hundred years and getting ready to celebrate their 100th anniversary. He said they have embarked upon an expansion of their facility and have been through several processes to accomplish that with this being the last of those. He said they have obtained a Conditional Use Permit (CUP) for additional height and he would come to the 199' feet figure in just a moment. He said they have submitted a site plan that covers three phases of the expansion. He said he asked the engineer to prepare a colorized plat showing the expansion so you can pass it among yourselves.

Ms. Kirkman reminded Mr. Leming if he passes around the plat it would be retained for thirty days.

Mr. Leming explained the plat for the Board members and said they would give more details if anyone was interested.

Mr. Leming said the consolidated parcels are as indicated. He said they can not consolidate parcels that are either separated by a public road or by another parcel. He said they consolidated to the extent that was possible. He said they consolidated all the parcels over on the west side of Toluca Road; there are two parcels that were consolidated on the east side of Toluca Road. He said the southern most collection of parcels is separated from the northern parcel by another property and for that reason they are not permitted to consolidate those parcels. He said it would not help to subdivide further because they are still separated by Toluca Road and other parcels. He said so the Commissioner of Revenue has given them direction to this effect and this is the maximum extent to which they can consolidate the parcels. He said what they have done and the subject of the May plat (GDP) is to try and balance the open space requirements between those three former collections of parcels so they match as closely as possible to each other. He said as noted by Ms. Kirkman it did result in slight variations between the three collections of formal parcels. He said track one on the eastern portion of the property to be used for a parking lot the open space ratio being asked for is 54.7%. He said on track two which is the other consolidation of parcels on the eastern side of Toluca Road, we are asking for a modification of 50.6% and on track three which is everything to the western side of Toluca Road we are asking for a modification of 53.7%. He said that comes to an aggregate for the site of 53.1%. He said they think they have made all the adjustments that they can to the plan to bring those figures as close together as possible. He said those are the variations contained in my letter to Ms. Hudson on May 25, 2007.

He said on the height, the Board of Supervisors on their own motion granted the additional height. He said it was actually Mr. Fields that proposed the height. He said they had requested 80' feet and perfectly content with that because they think that accommodates them. He said there was a motion that if it did not interfere with air space that we should be able to go up as high as they wanted to. He said the Board went along with that motion and we did not object to it. He said you are to understand they did not request it and content with the 80' feet for the height as that is what was necessary to accommodate the sanctuary. He said there will also be steeples on the property but they are not covered by the Ordinance because they are not habitable living space. He said the Board did approve the CUP and have copies if you need to see it.

Mr. Leming said as far as the issue with the advertisement if you do not put the specific request and modification he said there would not be a restriction on that at all.

Mr. Leming said he wanted to point out that this request is consistent with some of the BZA's prior applications. He said the New Life Community Church received a modification of 57% under a Special Exception. He said Ebenezer Methodist Church received a Variance to 50% and that was at the time prior to the Board's instituting the Special Exception procedure that you implement now. He said he would be happy to answer any questions the Board may have and

the engineer is present, pastors and trustees of the Church. He said just about everybody in the audience is from Mount Ararat Baptist Church here tonight for support of the request. He said this is an existing Church that has been there longer then any other facility in the general vicinity and continuing as a Church use. He said the development of the Church to date and this is the second major expansion has not interfered to our knowledge with any of the other property uses that are nearby. He said they are not aware that it would affect the health or safety of persons residing in the area or be detrimental to the public welfare or property in the vicinity. He said they think it meets the requirements that the BZA needs to find for a Special Exception.

Mr. Ackermann asked what the time lines of the three phases are.

Mr. Leming said Phase I will start immediately. He said as with much Church development Phases II and III are dependent on the ability to raise money. He said to put actual calendar dates on those two phases is a little unclear. He said it is fair to say that the Church would to get through all of the phases as quickly as possible. He said he did not think it would be unusual for a build out of this nature to take seven, eight, and nine or maybe even ten years.

Mr. Ackermann said there are some wetlands marked that are going to be built over by the two story sanctuary.

Mr. John Peters, Welford Engineering said there will be some wetlands that will be disturbed through out the three phases of development. He said if you look at the exhibit, to the north of the expansion or to the right of the board you will see a substantial area of wetlands, probably 50' feet wide and we are preserving those wetlands. He said if you look at sheet C4 on the drawing and look to the far right you will see an area of wetlands. He said those wetlands will be preserved. He said the vast majority of the remaining wetlands on site have developed in storm ditches, lawn, and as of today they have received permits from the Corp of Engineering and DEQ for the proposed disturbance on the plans.

Ms. Kirkman asked if they would be doing any wetlands mitigation.

Mr. Peters said they are doing wetlands mitigation but not creating new wetlands on the site.

Ms. Kirkman asked what those mitigations would be.

Mr. Peters said as he understands it there is a purchase of credits in wetland mitigation banks.

Mr. Beauch asked if the Church had done anything to purchase more land.

Mr. Leming said yes they had and Reverend Poss who is in charge of purchasing additional land can tell you what he has done.

Reverend Gregg Poss said after the Board of Supervisor's meeting they sent out a letter to all the property owners that had land next to Mount Ararat's property. He said the letter explained the process they are going through and requesting if they had a desire to sell their property to the Church they would entertain those negotiations. He said as of today he has not received any notifications from any of the property owners that they would be interested in doing that. He said they have talked informally to some of the neighbors and told them that at whatever point they would be willing to sell their property that Mount Ararat would be interested in buying the property. He said they have good relations with their property owner/neighbors but as of yet we have not received any offers to sell.

Mr. Beauch asked what is being done for stormwater management.

Mr. Peters said staff mentioned they submitted a stormwater management concept plan for review. He said that plan included the full build out of this project; the stormwater program includes stormwater management facilities that are expanded from what exist today. He said they are also proposing and will be providing a number of low impact development of bio-retention or rain gardens depending on what you choose to call them. He said they are meeting Stafford's requirements on stormwater management for our site.

Mr. Leming said the way the stormwater Ordinance works, and some of you may realize this, there is an obligation under the Ordinance for any new development and that runs with the site plan. He said stormwater is a component that is addressed completely before construction begins. He said the Stafford Ordinance requires that low impact development be examined before any kind of conventional stormwater can be utilized. He said when Mr. Peters was talking about rain gardens and low impact that is what he was describing and that is what our Ordinance requires. He said the stormwater concept plan is the first step then they get into more detail design once the stormwater concept plan is taken care of.

Mr. Beauch said do you have any plan during the phases to aid in any way with traffic movement. He said you are going to put a lot of people on a sizeable piece of property. He said are you expecting the County to anticipate this and improve roads along the way or are you going to be helping along the way.

Mr. Leming said it is a signalized intersection. He said so the main entrance to the Church is at an existing traffic light. He said there is also access to Toluca Road and a couple of side entrances. He said those access points do not meet current Virginia Department of Transportation (VDOT) standards. He said they have been working with VDOT on those access points. He said what VDOT has said it would accept would be removal of those entrances (two of them) or bringing Toluca Road up to current VDOT standards as well as the entrances within a period of three years. He said the major traffic flow heads out to state route 610 by the main entrance and minimal traffic on Toluca Road. He said widening of Toluca Road would not be an

easy thing and VDOT thinks they will want those entrances closed in the course of the development.

Ms. Kirkman asked if a traffic impact analysis has been done.

Mr. Leming said this is not the type of application that triggers a traffic impact analysis done by an engineer. He said no the traffic is not driven by the expansion plans but by the membership. He said the present membership is 2,200 and he will let Reverend Gaston give the future projection.

Reverend Gaston said the current membership is 2,200 and average attendance on Sunday mornings is probably 1,100 to 1,200 over three services. He said attendance is staggered over three services and the objective as we expand our worship space we would like to go back to two services. He said as a Church and as we continue to reach people we will provide services as we continue to grow on Sunday morning. He said the worship space right now is about 700 capacity in each worship hour which gives us currently a ceiling of 2400 if we had full attendance in all three hours. He said we are moving to a space that could be 1,300 each hour and begins to give us that ratio over three hours. He said their engineer can talk about parking issues because Stafford has certain requirements for how much space you have to have. He said they are even exceeding that so they can go above and beyond code.

Mr. Peters said they have been meeting with VDOT since late of 2006. He said and while not required for the CUP or the site plan or even this request this evening we have done some traffic studies on the site in the interest of making sure our entrance is safe for the members of the Church and the public. He said additionally on the CUP one of the conditions is to upgrade Toluca Road along the Church frontage and while today it is a narrow rural road with some impaired site distances. He said the CUP does identify that we will be dedicating up to 60' feet of right-a-way where we have that ability and improving Toluca Road along the Church frontage.

Ms. Kirkman said she understands a traffic impact process is not required however it is helpful to understand the impact not only on Toluca Road but that intersection as well. She said it does refer on the plat you have given us to the traffic impact analysis submitted to Stafford County.

Mr. Leming said as part of the CUP we have to give them impact statements so there is that limited information. He said VDOT is the one that has to issue entrance permits so VDOT is the one that examines the traffic issues more closely than the County. He said there is no indication based on VDOT's review of this that there is any need for improvements along 610 to accommodate any increase in traffic here.

Mr. Overbey said it appears that a good bit of the parking is on the other side of Toluca Road.

Mr. Leming said there is parking on both sides of Toluca Road.

Mr. Overbey asked how people would get back and forth across the road.

Mr. Leming said there will be cross walks; the parking on the east side of Toluca Road is part of Phase III. He said when that happens Toluca Road must be improved and part of those improvements will be cross walks so the persons parking on the east side of Toluca Road can cross the road safely.

Mr. Overbey said unless he is wrong there is a subdivision down the road from the Church.

Mr. Leming said there are about fifteen units to be built there.

Ms. Rutledge said on C5 I see two pedestrian walk ways and are you going to try to channel the pedestrian traffic because that is a concern.

Mr. Peters said they are going to try to give a safe means for the members of the Church to cross at a safe location but we have not worked out the finer details. He said obviously they are going to cross where the site distance is the best and on-coming traffic can see them as well as pedestrians seeing the traffic.

Mr. Ackermann asked if there are figures on the rate of growth of the membership over the last five years and what they project it to be.

Reverend Poss said the numbers of the last ten years have been somewhat stagnate. He said they use some rules of thumb in determining capacity. He said one is for large buildings once you reach 80% capacity that restricts growth and we have seen that in our current facilities. He said we have been at 80% of our capacity for about twelve years and had times where we have gone above that but it always seems to come down to rest at the 80% capacity.

Ms. Kirkman said she is really concerned about the traffic issue because you are talking about, at least in seating about 3,500 that could be in one area. She said what would be the maximum occupancy of the building when it is finally constructed.

Reverend Poss said while membership may be up so it would not be all 3,500 people at one time.

Ms. Kirkman said why you would need to build something that large if people are not going to use it, which is what you are saying.

Mr. Leming said nobody is saying they aren't going to use it.

Ms. Kirkman said use it to full capacity is what he said.

Mr. Leming said the capacity of the sanctuary is not going to be 3,500 people. He said they are going have a facility to permit the Church to grow but we don't think any Church anticipates that every member is going to be there at one time.

Ms. Kirkman said it says 3,500 seats proposed, what are those 3,500 seats proposed for.

Ms. Leming said everything in the entire facility.

Ms. Rutledge said you have other buildings for other uses above and beyond the sanctuary.

Mr. Leming said correct.

Ms. Rutledge asked if they are going to retain the existing sanctuary and have a new one and education buildings.

Mr. Leming asked who is the best to talk about the two sanctuaries and education buildings.

Reverend Poss said they currently have a center right now that is a family life center which is a gym with the seating capacity of approximately 700. He said in the Phase I sanctuary they are looking at have approximately 1,400 seats, 1,000 on the floor and 300 or so in the balcony if we choose that option.

Ms. Kirkman asked what is the maximum amount of people you have had at any of the events there.

Reverend Poss said for an Easter or Christmas Service they have as many as 2,500 on campus but they extend the services and have three and sometimes four throughout the morning.

Mr. Overbey said they have talked about the services but you also have your Sunday School educational classes going on at the same time that you are having worship services. He said it would be helpful if we knew approximately outside the worship service itself how many folks are you going to have in all the classrooms. He said a total of people on campus at any one point in time is what we are looking for.

Reverend Poss said during Phase I which will be primarily a pre-school children's building and sanctuary when the building is completed they would have somewhere around 500 to 600 children and other children in that facility. He said in terms of children 300 and adults right now about 300 adult bible study while service is going on. He said we anticipate that will grow as we gain more space but it is difficult to determine how fast that will grow.

Mr. Overbey said if he takes a wild guess at some points in time while you have worship service you are going to see as many as 2,000 people.

Reverend Poss said on campus that is a potential.

Ms. Kirkman asked could you tell me what the language on the CUP is.

Mr. Leming said the condition Mr. Peters was referring to is condition number two; Toluca Road should be dedicated to a width of 60' feet unless determined by the County and VDOT that portions of Toluca Road do not meet standards for street dedication. Applicant shall dedicate right-a-way of less than 60' feet in width to the extent necessary for the safety of the public. He said that is the condition he was referring to.

Ms. Kirkman asked is your applicant willing to do that as a condition of the Special Exception a formal traffic impact analysis and make any improvements recommended by that. She said that is a condition we sometimes see with these sorts of things.

Mr. Leming said he did not believe that they would be opposed to doing the study but thinks the understanding would have to be that the requirement be that they would implement any traffic improvements warranted only by the study.

Mr. Ingalls said he was struggling with the project. He said this is not just the simple 80% down to 53%; the project has a lot of different facets to it with it being divided by the road, three different tracks of land and each of them with separate issues. He said what plan the Board approved and what plan do we have in front of us.

Mr. Leming said the only difference between the two plans; you have a GDP dated May 22, 2007 before you the only difference between the two plans is a reorganization of some of the parking spaces. He said the sole purpose was to try to get as much uniformity as possible in the request for modification between the three tracks.

Mr. Ingalls said he was a little concerned because if he looked at the one we should be looking at the front sheet that talks about development and list all the different tax maps. He said it talks about the area of 35 acres and he switched to sheet two under the site data and it talks about only tax map 19 – 63, 62c and that is only 26 acres. He said all the calculations on that sheet are based on 26 acres.

Mr. Peters said on that sheet go one column to your left and you should see 19-64A and that is track one and Mr. Leming referred to if you look down the open space ratio you will see it says 54.7% and if you go down below that you will see tax map 19-63A.

Mr. Ingalls said what you have done is put the three tracks on this sheet.

Mr. Peters said that is correct.

Mr. Ingalls said he noticed on one sheet the parking on the far northern end of the property had a ninety space parking lot one time and now it probably has a 200 space parking lot.

Mr. Peters said that is the difference between the GDP presented for the CUP to the Board of Supervisors and what you have before you this evening. He said we have shuffled some of the parking so on the three separate tracks the open space is more balanced.

Mr. Ingalls said you went to the County and had a stormwater concept plan approved for the total project. The plans before us have no stormwater management facilities shown on any of the tracks.

Mr. Peters said if you focus on sheets C3 and C4 and on C3 at the upper right hand corner just to the west of the Phase I expansion it says stormwater management facility. He said if you look to the right of what we call the ring road you will see the one side of a second stormwater management facilities. He said one facility is separated by the road but they work together as one facility. He said additionally, throughout the parking lots on the site within the green space the median space there are bio-retention facilities, and rain gardens that are the l.i.d. facilities throughout the site. He said those are not readily discernable on your sheet. He said on sheet C4 if you look to the left of the wetlands within the parking lot you will see where it calls out lid, those are two of the facilities being constructed within Phase I. He said if you look right you can see other l.i.d. facilities again within those green medians between the parking base.

Mr. Ingalls said he finds it hard to believe that two lids would be adequate for a 200 space parking lot but that is not his call. He said the opposite side of the road the east side of Toluca is there any stormwater on that side.

Mr. Peters said there will be distributed lid facilities.

Mr. Ingalls said there are none shown on the plan.

Mr. Peters said he understands that and when they did the stormwater concept plan they had not re-shuffled the parking. He said the impervious area on the site as a whole do not change and believe the stormwater concept that has been approved is still valid.

Mr. Ingalls said he was concerned if any consideration was given to the parking areas when used after dark you are going to have headlights shining into people's houses. He said was any consideration to providing berms or anything other than just a plain buffer to prevent lights from shining into to somebody's bedroom.

Mr. Peters said for Phase I they were not proposing any berms around the perimeter of the site. He said the grading on Phase I which you do not have the benefit to see will provide some of that shielding where the parking lots are lower than the properties to the west. He said the GDP you

have would not show that and they are providing the required landscape buffers and preserving a lot of the existing vegetation.

Mr. Ingalls said he was concerned about the neighbors and he knows that you are too. He said things like that concern me. He said he is concerned about the size and timing of the project. He said he has always been one who thinks the BZA should put time limits on granting Variances or Special Exceptions. He said in ten years from now when you get ready to do Phase III or IV and things in the County have changed, the neighbors changed and somebody wakes up one morning and says when this plan was approved, ten years ago. He said he is struggling with how to approve something that is probably ten years away and all the things we talk about today may not be applicable and other things that could be more applicable. He said you have already told me that Phase III parking and upgrades of the road would not be done until Phase III.

Mr. Leming said he could address that because the Planning Commission and the Board of Supervisors had some of the same concerns and we cannot tell you when these things are going happen because it depends on the ability to raise money and the growth of the Church. He said they included a condition to the height permit, condition number eight which says "this CUP permit will expire five years from date of approval if a building permit has not been issued for all or a portion of the proposed development as shown on the GDP". He said the thought was that they needed to be started strongly by that point in time. He said that would not leave it as opened.

Mr. Ingalls said the Board of Supervisors are smarter then he is but when you tell me all that has to be done is finish it or start some portion, that is not a time frame. He said once you start Phase I that takes care of that condition and in all due respect he is not satisfied with that. He said he is trying not to approve something that would change the character of the neighborhood and the character of the neighborhood could change in ten years.

Mr. Leming said he thinks the thought of the Board was given the problem of them being partially started the Board did not want to be in the position of pulling the plug on them after the project was underway.

Mr. Ingalls said he understood.

Ms. Kirkman said she would like to follow-up on that since this is a three structured project. She said why not get the Special Exception by the phase particularly since this is divided into different parcels and we have an entire parcel that apparently nothing is going to happen until Phase III. She said why not wait until Phase III to get the Special Exception to get the Phase III.

Mr. Leming said the problem with Phases I and II co-mingled on one parcel. He said all of Phase I and II occur on the western parcel. He said Phase III is partially on that parcel so there is not a direct relationship between the tracks or combination of the parcels and phases. He said the

only absolutely true statement we can make is that parking areas to the east of Toluca Road do not come in to play until Phase III. He said otherwise there are portions of each phase that occur on the western parcel which is the largest parcel of the current Church. He said to get a Special Exception for open space modification for Phase I I would not know how you begin to figure it out.

Mr. Ingalls said the east side of Toluca Road could be separated.

Mr. Leming said you could because that Phase III build out is dependant on that parking.

Ms. Rutledge said she had some questions about lighting for the parking areas.

Mr. Leming said the County has a lighting Ordinance that requires lighting be directed away from adjacent properties directed downward. He said through all the processes such as Planning Commission and Board of Supervisors there has not been a concern that the Ordinance would not cover the concerns of the lighting in the parking lot.

Ms. Rutledge said have you considered other options for the paved parking areas. She said there are some new materials that can be used.

Mr. Peters said we have not explored other materials and some of those materials have their own problems with freezing weather.

Ms. Kirkman said one of the most troubling aspects about this application is the building height. She said it is hard to believe that 199' foot building would not change the character and pattern since we not only not have anything that high in that area but also in the entire County. She said you stated that in the original application your request was for 80' feet and as of a condition of this Special Exception would you be willing to go back to eighty feet.

Mr. Leming said they do not have a problem with that and it was not our idea and we appreciate what the Board did but it was not our idea.

Proponents:

Mr. Bob Gibbons said he is the Supervisor for the Rock Hill District where the Church is and is present to speak in favor of the request. He said a crosswalk has been done by VDOT, a light has been specifically designed on the divided highway because of expansion, and it took six and half years to find out who owned Toluca Road. He said all the utilities are in the growth areas.

Opponents: None

Ms. Kirkman gave the applicant a final opportunity to speak.

Mr. Leming said he did not have any additional points given the exception that Church people are exceptionally cautious, courteous, they use people to assist with traffic if there is a major event at the Church. He said it is not unlike St William of York on Route 1 where they would deputize members of the Church to help with the traffic flow in and out of the Church until they got their signal. He said this Church is somewhat ahead of them and we think this is a preferable traffic situation coming out on to Route 610 with a signal then what you have at Ebenezer at least right now.

Ms. Kirkman asked Mr. Leming which track is the one for the parking for Phase III.

Mr. Leming said the Phase III parking is track three.

Mr. Peters said track one and track two are east of Toluca Road.

Ms. Kirkman said track three is where the buildings are.

Mr. Leming said that is correct.

Ms. Kirkman closed the public hearing.

Motion:

Mr. Overbey made the motion to approve the Special Exception SE06-13/2600643.

Ms. Rutledge seconded the motion.

Mr. Overbey said the reason he made the motion was with everything presented tonight he feels the Church has done more than alot of our cases in these situations. He said he knows it is a big project and alot going on up there for the next ten years or more. He said he understands Mr. Ingalls concerns about things changing in the County and understands why the Church wants to go it all in one package so they do not want to come back and possibly have it cut out from underneath them by either this Board or somebody else down the line. He said he feels like they have bent over backwards to have something they can work with up there.

Ms. Rutledge said she seconded the motion for the same reasons as Mr. Overbey and also in addition if we try to vote on this in the different phases the significant problem with that is when you get to Phase III that is the largest sanctuary that the Church is proposing. She said if at that time if it is not approved you have taken away the most significant part of their Church. She said

the Board has imposed restrictions that are thoughtful and important so the project will go forward and ten years down the road the project has not started. She said she thinks this is a good plan, they are very aware; they have done their homework and very willing to cooperate.

Mr. Beauch said he had two questions.

Ms. Kirkman said before we move on to questions she has some friendly amendments I would like to offer.

Mr. Beauch said one of mine was a friendly amendment. He said would the motion maker consider changing or adding to his motion that they limit the building to 80' feet.

Mr. Overbey said very honestly I do not know if we have the authority to do what you are asking us to do because the Board of Supervisors already approved that height limit. He said he did not see how we as a BZA can override what the Board of Supervisors has done. He said he would not accept that as an amendment to the motion.

Mr. Beauch said are we putting a limitation on each of the tracks in accordance with what they proposed or are we giving them changes to the average of the three tracks.

Mr. Overbey said the request was for a reduction to 53.1% that is what the request was for.

Ms. Kirkman said since Mr. Overbey has rejected the friendly amendment on the height. She said she is going to make a substitute motion and the substitute motion is to approve the application with the following conditions; 1. Height of the building limited to 80' feet. 2. Applicant will conduct a traffic impact analysis and make any traffic improvements as recommended as a result of increase traffic due to the project. 3. This Special Exception for the plan that has been presented to the BZA tonight.

Ms. Kirkman asked if there was a second to her substitute motion.

Mr. Ackermann seconded the motion.

Ms. Kirkman said the process is we vote on the substitute motion first so the discussion is now open on the substitute motion.

Ms. Kirkman said she made the substitute motion with the conditions because particularly the height issue and the traffic issue she believes have impacts bordering on making it impossible finding that it would not change the character in the established pattern of development of the proposed uses. She said she feels if those things are in place she is inclined to approve this application.

Mr. Overbey said as he stated in his motion previously he did not feel that the BZA can change something that the Board of Supervisors has already approved as far as the height. He said the applicant has already said they are not going to build anything 199' feet high anyway.

Ms. Kirkman said then they do not mind agreeing to that as a condition.

Mr. Overbey said he did not think that is going to change anything as to what they could do and that is my point. He said he thinks the Board of Supervisors can override and he thinks they have already done that.

Ms. Kirkman said that is for a CUP and we are here talking about a Special Exception.

Ms. Rutledge said concerning the height restriction in the plan it states one story/two story for the structures. She said she is not sure you could construct a 199' foot building with two stories and did not think they have anything more than a two story building. She said the applicants have already said they will not build above 80' feet and that is their plan. She said on the plan we are approving it states one story/two story.

Mr. Beauch said he is not going to support motion because he thinks it is to far fetched for us to require a traffic impact study that is not required by the County.

Ms. Rutledge said she submits a substitute to the substitute motion.

Ms. Kirkman said she needs to check she is not actually sure.

Ms. Rutledge said she did not think in the history of this BZA that the Chair has made a motion. She said she is not sure the Chair can make a motion.

Ms. Kirkman said actually we have looked at that issue and it is possible under Roberts Rules which governs us.

Ms Rutledge said she is making an amended substitute motion that we vote as we are, we approve this case with the plan that was submitted this evening and we could request a traffic analysis report.

Mr. Overbey seconded the motion.

Mr. Ackermann said your substitute motion is essentially the same as Ms. Kirkman's except removing the height restriction.

Ms. Rutledge said she made the motion because she thinks the BZA do not have the authority to override the Board of Supervisors and the applicant has already stated many times that they are

going to build according to the plan it states one or two stories on the plan and stated their plan is to build 80' feet.

Mr. Amador said so your motion is the exact same motion.

Ms. Kirkman said the second condition she had which was the Special Exception was per the plan that was presented to us tonight.

Mr. Ackermann said he thinks the Board of Supervisors giving us the option to grant Special Exceptions actually gives us some legislative authority and so if we wanted, not on the permit that, was granted but on this, if we wanted to say that the limit was 80' feet then he feels it is certainly within our purview to do that.

Ms. Kirkman said not only that, the applicant agreed that they are willing to do that.

Mr. Amador said whether we can do it or not, which he thinks can be done, but the point is irrelevant, what is the motion.

Mr. Ingalls said he has not had a chance to say anything yet and I am letting you figure out what the motion is and what is the final motion.

Ms. Kirkman said this she thinks the final motion is at the moment. She said it is a substitute to the substitute and the substitute to the substitute is a motion to approve the application with two conditions; 1. Special Exception is for the plan as presented to us tonight. 2. The applicant to conduct a traffic impact analysis and do any improvements that are indicated by the increased traffic to the project. She asked is that everyone understands of the substitute motion that we are now debating.

Mr. Ackermann said we have to vote on whether to substitute it or not, we do not debate this substitute at this point, we do not know if we are going to substitute it or not.

Ms. Kirkman said thank you Mr. Parliamentarian.

Mr. Ingalls said he is still at the position that he does not like to approve things that are far in the future that will have an impact on people that are not in this room or in this County today. He said a little hesitant to vote for a motion that would allow someone to do something ten years from now and not have those people have an opportunity to speak and find out what is going on in the County. He said he is struggling on what to do on that part of the project. He said he also feels, this is not a simple issue here, you can look at all these plans you want and think you understand it and if you do you are a better person then I am to understand it before you came. He said now you have listened to the testimony that was given tonight and to try to come up with, what are we going to do with this thing. He said there are a number of things we did not

even touch on and he is concerned about the neighbors, parking, lights and they said we are going to do this, and maybe do that, but nothing we have done has said you shall do these things

to protect these people. He said he is leaning towards not supporting the motion or vote in favor of any of the motions. He said he did not feel the BZA had adequately addressed the project, adequately looked at it and he is not prepared to come up with all the conditions tonight that he feels like should be considered. He said it is a massive project when you start putting a 3,500 seat capacity Church in this area and all the other things that go along with that. He said when you reduce from 80% to 50 some percent you are pushing the parking closer to these people than what our Ordinance says and yet we have done nothing to make sure they are protected. He said he is most likely not going to vote for any of the motions tonight.

Ms. Kirkman said excuse me Ms. Rutledge but she wants to get back to a point of order raised by Mr. Ackermann, which she thinks he is correct and we have to vote on now is not the merits of the substitute to the substitute but on whether or not we will even allow the substitute to the substitute to be introduced and that is Roberts Rules and that is what we will do. She said, Mr. Ackermann is there a particular way that she needs to state that.

Mr. Ackermann said he thinks we just need to vote on whether to accept the substitute motion as a substitute to the original motion.

Ms. Kirkman said our vote now is whether or not we are going to allow the substitute to the substitute introduced by Ms. Rutledge on to the floor for debate.

Vote:

Motion to approve 4-3

Ms. Rutledge – yes

Ms. Kirkman – nay

Mr. Ackermann – yes

Mr. Beauch –yes

Mr. Amador – nay

Mr. Ingalls – nay

Mr. Overbey – yes

Ms. Kirkman said now we discuss the substitute to the substitute before taking a vote on that motion.

Mr. Overbey said I would suggest Madame Chairman we have already done that.

Ms. Kirkman said Mr. Ackermann was pointing out that if we vote on this substitute we do not move on to the others.

Mr. Ackermann said we have substituted this for the original motion.

Mr. Overbey said the original and the first substitute.

Ms. Rutledge said Mr. Ingalls regarding your statement would not some of the Planning and site approval process, the different processes the Church is going to have to go through address the majority of your issues. She said if they would not address some of them would you want to add conditions to the motion.

Mr. Ingalls said he is sure Planning and staff would think about it and maybe ask but there is no requirement that they meet. He said they only have to meet the minimum standards as set forth in the Ordinance. He said whether you would every get anything, the staff can not require.

Ms. Rutledge said it has been our procedure to request the applicant to put in buffers, specific type buffers to protect adjacent property owners especially for Churches so is there something you could offer as an additional condition that we could add to the motion.

Mr. Ingalls said he was hoping the applicant was going to provide us with what kind of buffers they planed to put and not just the standard that they plan. He said he was hoping the applicant would come up with a plan that really addressed the issue. He said after hearing everything he is not prepared to vote on a motion I don't feel addresses the conditions and I don't think the Board has considered all the issues with the project. He said he feels it is a rush to judgment and I think the Church is doing what it needs to do but at the same time he understands what he is voting on and what he expects to get in a project. He said people know that what they are building is what they want to do or the minimum is and he would like to see the case tabled and come up with conditions we all could live with and go from there.

Motion

Mr. Ingalls made a motion to table this case until further study to give the Board more time to examine the project more closely to come up with a complete list of conditions that will make sure this project meets all the requirements and makes sure it protects the people of this County.

Mr. Beauch seconded the motion.

Ms. Kirkman said a motion to defer is not debatable so we will move on to the vote

Ms. Kirkman asked if Mr. Ingalls wanted to include a time limit and he stated yes the July meeting.

Vote:

Motion to approve 4-3

Ms. Rutledge – nay
Ms. Kirkman – yes
Mr. Ackermann – yes
Mr. Beauch –yes
Mr. Amador – nay
Mr. Ingalls –yes
Mr. Overbey – nay

Ms. Musselman reviewed the following case for the Board.

SE07-6/2700215 - BENNIE EARL GAINES - Requests a Special Exception per Stafford County Code, Section-28-273, "Nonconforming Structures or Residential Buildings", to allow an addition to an existing nonconforming single family dwelling on Assessor's Parcel 45D-2A-14. The property is zoned R-1, Suburban Residential, located at 83 Kelley Road, I.O. Carner Subdivision.

Mr. Gaines said he has lived at this location for three and a half years and this house was built in 1952. He said the neighbor to the left of me where the four foot property line is gave the previous owner two feet to have room for a walk way where it is four feet now. He said she has no objections with us doing the addition and she would be the only one to see the addition because it is on the back of the property. He said it is just this side that is the question and my neighbor that lives across the street works for the County and none of my neighbors have any objections. He said his neighbors are important to him and would not want to upset the neighbors. He said one of the reasons he wants to add on is they have one bathroom and when we purchased the house it said we had one and a half bath but we don't know which occupant had converted that space into a washer and dryers pace. He said they want to add on a master suite and a bathroom. He said to the right of the addition we have a garage and the addition will be the proper footage away from the garage.

Ms. Kirkman asked Mr. Gaines if he was given the criteria for a Special Exception.

Mr. Gaines said no.

Ms. Musselman said each applicant is given the requirements for a Special Exception or Variance when they are given their packet.

Ms. Gaines said yes he did read his packet.

Ms. Kirkman said she was going to read some of the criteria so you can tell us how your application meets the criteria. She said the first is around changing the character and established

pattern of development in the neighborhood and do you see that doing this in anyway. She said if somebody driving by it will look the same.

Mr. Gaines said they will not see the addition driving by.

Ms. Kirkman said the height of the addition won't be more and the materials will be the same.

Mr. Gaines said the height and materials would be the same.

Proponents: None

Opponents: None

Ms. Kirkman gave the applicant a final opportunity to speak.

Ms. Kirkman closed the public hearing.

Motion:

Mr. Ingalls made the motion to approve an addition as proposed in the information presented and the addition shall be no closer than 11' ½' feet to the side property line.

Mr. Amador seconded.

Mr. Ingalls said he made the motion because he feels it meets the requirements set forth in our new Ordinance for Special Exceptions. He said the house as Mr. Gaines said built prior to any Zoning requirements in the County. He said certainly most of us would not want to live in a house with just one bathroom and addition can be supported. He said the lot is of size and depth that it can support the addition and by having it behind the house it would not change the character of the neighborhood at all.

Vote:

Motion to approve 7-0

Ms. Rutledge – yes

Ms. Kirkman – yes

Mr. Ackermann – yes

Mr. Beauch -yes

Mr. Amador - yes

Mr. Ingalls - yes

Mr. Overbey - yes

UNFINISHED BUSINESS

None

REPORT BY DEPUTY ZONING ADMINISTRATOR

Ms. Kirkman and the Board thanked Ms. Hudson, for the training presentation on Chesapeake Bay Resource Protection by Staff and CBLAD (DCR).

ADOPTION OF MINUTES

May 22, 2007

Mr. Beauch made the motion to approve.

Mr. Ackermann seconded the motion

Vote:

Ms. Kirkman said she would abstain because she had not read the minutes.

Motion to approve 3 yes and 4 abstain (motion failed)

Ms. Rutledge – yes

Ms. Kirkman – abstain

Mr. Ackermann – yes

Mr. Beauch -yes

Mr. Amador - abstain

Mr. Ingalls - abstain

Mr. Overbey – abstain

OTHER BUSINESS

Ms. Kirkman said she wanted to make sure there is a quorum for July since a couple people mentioned they would not be at the meeting.

Mr. Overbey said he would not be at the July meeting.

Mr. Ackermann said he would not be at the July meeting.

Mr. Amador said he would not be at the August meeting.

Mr. Ingalls said he hopes that you come to the next meeting with some suggestions regarding the Church so we can make a decision on that case. He said maybe the Church can help us and he is sorry but if we get some conditions he feels the Board can move forward.

Ms. Kirkman said she wanted to make sure they are not creating a procedure error by discussing after the motion.

Mr. Amador said that item is still a public hearing.

Mr. Ingalls said the good news is we are getting the letters sent to the applicants and what they say but a little concerned that we know what it says today but five years from now when somebody goes through the file and asked what you approved.

Ms. Hudson said she understands what you are saying but it would be very helpful for staff if you would be specific in what you would like the letter to say.

Mr. Ingalls said from me.

Ms. Kirkman said staff is looking for direction from the Board and since you raised this Mr. Ingalls.

Ms. Rutledge said is the motion repeated in the letter.

Ms. Hudson said the motion is not repeated in the letter.

Mr. Ingalls said you can make it to detail.

Mr. Overbey said what are the chances that the letter is the only record of the proceedings.

Ms. Hudson said hopefully not and you have the minutes.

Mr. Overbey said is it retained in the file.

Ms. Hudson said yes it is and hopefully it will be scanned.

Mr. Overbey said those records are not destroyed are they.

Ms. Hudson said no.

Mr. Ingalls said just a few months ago we had a case that when Ms. Hudson when to the County Attorney he said your approval did not say anything. He said the approval was not clear.

Ms. Hudson said if you want us to be specific we need some language from you in your motion.

Mr. Ingalls said we need to do a better job in our motion making.

Ms. Rutledge said we use to staff recommendations on the applications.

Ms. Hudson said you may have gotten staff recommendations on more difficult issues like flood plain and resource protect applications.

Ms. Rutledge said we used to get recommendations and conditions.

Mr. Overbey said we have only gotten them for certain things.

ADJOURNMENT

9:30 p.m.

Motion:

Ms. Rutledge made the motion to adjourn.

Mr. Beauch seconded.

Vote:

Motion to approve 7-0

Ms. Rutledge – yes

Ms. Kirkman – yes

Mr. Ackermann – yes

Mr. Beauch – yes

Mr. Ingalls – yes

Mr. Overbey – yes

Mr. Amador - yes

WLD

Approved: _____ Date: _____
Rachel T. Hudson, Zoning Administrator